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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------|
| 09/534,814  | 03/22/2000  | Duane Charles Gates  | 2328-023 RI                  | 9066             |
| 7590 07/25/2011   |             |                      |                              |                  |
| Allan M. Lowe<br>Lowe Hauptman Gopstein Gilman & Berner, LLP<br>1700 Diagonal Road, Suite 310<br>Alexandria, VA 22314 |             |                      | EXAMINER<br>PASCHALL, MARK H |                  |
|   |             |                      | ART UNIT                     | PAPER NUMBER     |
|   |             |                      | 3742                         |                  |
|   |             |                      | MAIL DATE                    | DELIVERY MODE    |
|   |             |                      | 07/25/2011                   | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/534,814

**Applicant(s)**

GATES, DUANE CHARLES

**Examiner**

MARK PASCHALL

**Art Unit**

3742

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF 298)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_

### **DETAILED ACTION**

In view of the Board of Appeals Decision of 09-30-2010, claims 1-58 are allowable over the prior art of record. There are some issues to resolve, as set forth below, before the application can proceed to issue.

A new oath is needed; both the residence and the mailing address have to be provided. In the current oath only the mailing address was provided.

37 CFR 1.63(B)2 required that the person making the oath or declaration has reviewed and understands the contents of the application, including the claims, as amended by any amendment specifically referred to in the oath or declaration; Applicant has dropped the term "amended". Correction is required.

The amendment to the claims on 4/17/2005 was improper. The amendment should be considered non-responsive and Applicant is required to submit a proper amendment to the claims in the designated time period, that is fully in compliance with 37 CFR 1.173(b) 2, that states that "An amendment paper must include the entire text of each claim being changed by such an amendment paper and of each claim being added by such amendment paper. For any claim changed by the amendment paper, a parenthetical expression, :amended", "amended twice", etc., should follow the claim number. Each changed patent claim and each added claim must include markings pursuant to paragraph (d) in this section, except that a patent claim or added claim should be canceled by a statement canceling the claim without presentation of the text

of the claim.” Paragraph (d) states that (1) the matter to be omitted must be bracketed, the matter to be added must be underlined,

Claims 39-58 are required to be underlined in the forthcoming copy of the claims.

In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

The term , “that the person making the oath or declaration has reviewed and understands the contents of the application, including the claims, as amended” is missing and is required to be submitted in the forthcoming proper oath.

The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.

Claims 1-58 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

See MPEP § 1414.01.

Assignee did not establish their ownership interest in the patent on which the reissue application is based. The applicant makes reference to the Reel and Frame in a response dated 2/7/2002, but this was signed by the attorney. The statement must be signed by a party authorized to act on behalf of the assignee, generally an officer of the assignee company. The 2/7/02 response does not contain an averment that the attorney is empowered or authorized to sign on behalf of the assignee.

The applicant needs to file a catch up oath/declaration as he amended the claims during prosecution. The supplemental oath must state "Every error in the patent which was corrected in the present reissue application, and which was not covered by the prior oath(s), submitted in the application, arose without any deceptive intention on the part of the applicant". (37 CFR 1.175(b)1, or language e equivalent thereof. See MPEP 1444 for handling of the oaths and declarations.

Each amendatory change when first submitted (4/17/06, 3/22/2000, 12/1/2004 and 8/21/2002) was not accompanied by an explanation of the support in the disclosure of the patent for change on pages separate from the pages containing the amendment.

Applicant is required to submit an oath, claim corrections and a response correcting the above deficiencies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK PASCHALL whose telephone number is (571)272-4784. The examiner can normally be reached on 7am - 3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for Primary Examiner, Art Unit 3742 published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner  
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Mhp

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